SUPREME COURT, U. S.

DEC 26 1968

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 788

In the Matter of the Application

of

KNICKERBOCKER INSURANCE COMPANY,

Petitioner.

for an order Staying the Arbitration Commenced by PATRICIA FAISON and CAROLYN E. RAINEY,

Respondents.

REPLY BRIEF OF PETITIONER

The petition in this court (pp. 6 and 7) reveals that the Court of Appeals handed down a decision prior to which it could not have been anticipated that a federal question would arise. It is contended that in no prior decision was a statute of the State of New York (*Article 17-A of the Insurance Law*) applied to abridge the authority of §167, subd. 2 of the *Insurance Law*, under which latter statute the contractual obligation at bar was created. Consequently, it was only by application for reargument that the federal question could be raised for the first time.

The situation presented in the petition is not at all novel to this court and the same has been discussed favorably to petitioner's position in the past.

Herndon v. *Georgia*, 295 U. S. 441, 444;

Great Northern R. Co. v. *Sunburst Oil Co.*, 287 U. S. 358, 366-367;
Missouri ex rel. Missouri Ins. Co. v. *Gehner*, 281 U. S. 313, 320;
Brinkerhoff-Faris Trust Co. v. *Hill*, 281 U. S. 673, 677-678;
Saunders v. *Shaw*, 244 U. S. 317, 320.

A concise discussion of the timely raising of the federal question at bar is also to be found in Stern and Gressman, *Supreme Court Practice*, 3d Ed., p. 99.

Under the foregoing authorities, it is submitted that it is immaterial to the granting of the instant petition that the Court of Appeals has not certified its consideration of a constitutional question upon the motion for reargument.

Respondent's claim at page "3" of their opposing brief that the matter at bar concerns only a question of interpretation and that, at most, the decision below was a *judicial* impairment of an obligation of contract. It is submitted, however, the petition demonstrates that the State of New York has enacted Article 17-A of the *Insurance Law* which has been applied in a manner by the Court of Appeals so as to impair the obligation created pursuant to the authority of §167-subd. 2 of that Law. It is submitted that in such manner did the State of New York pass a law impairing an obligation of contract to the injury of the petitioner.

The petition should be granted.

Respectfully submitted,

ARNOLD DAVIS,
Attorney for Petitioner.